

COOK COUNTY COMMISSION ON HUMAN RIGHTS

69 West Washington Street, Suite 3040
Chicago, Illinois 60602

Abdul MOHAMMED, Complainant)	
)	
v.)	Case No. 2015E015
)	
UBER TECHNOLOGIES, INC.,)	
Respondent)	

ORDER OF DISMISSAL

On November 18, 2015, Abdul Mohammed (“Mohammed” or “Complainant”) filed the above-captioned complaint with the Cook County Commission on Human Rights (“Commission”) against Uber Technologies, Inc. (“Uber” or “Respondent”) for unlawful retaliation in violation of § 42-41(a) of the Cook County Code of Ordinances. In his complaint, Mohammed alleges that Uber unlawfully retaliated against him, by terminating his access to its services as both a driver and a customer, shortly after he filed a race discrimination complaint against Uber with the Illinois Department of Human Rights (“IDHR”). Mohammed Cmpl. ¶¶ I.B, E-F.

On May 12, 2017, the Commission completed its investigation into Mohammed’s complaint and found 1) substantial evidence to support Mohammed’s unlawful retaliation claim with respect to the termination of his driver account; and 2) a lack of substantial evidence to support his unlawful retaliation claim with respect to the termination of his rider account. *See Mohammed v. Uber*, 2015E015 (CCHRC May 12, 2017).

The matter was then sent to administrative hearing and assigned to Administrative Law Judge (“ALJ”) Joanne Kinoy to proceed with a dispositive evidentiary hearing on Mohammed’s lone retaliation claim. On February 16, 2018, after discovery and after both parties filed a Joint Pre-Hearing Memorandum, an administrative hearing was held on the matter.

On August 14, 2018 ALJ Kinoy issued her Initial Recommended Decision and Order to the parties. Although Commission Rule 470.100(B) allows either party to file exceptions to a hearing officer’s initial recommended decision and order, here, neither party chose to file exceptions.


On October 4, 2018, Judge Kinoy issued her Final Recommended Decision and Order in this case, which is attached hereto as **Exhibit A**, recommending that the Commission find that the “Complainant has not shown by a preponderance of the evidence that the deactivation of his driver account on [sic] June 2015 constituted illegal retaliation in violation of the Cook County Ordinance.”

On November 8, 2018, with a quorum of the Commission members present, the Commission, after reviewing the record in this case and determining that ALJ Kinoy’s findings of fact were consistent with the manifest weight of the evidence, voted unanimously to adopt ALJ Kinoy’s Final Recommended Decision and Order in its entirety. All findings of fact and conclusions of law contained therein are incorporated herein as the Commission’s findings of fact and conclusions of law.

Accordingly, the Commission orders that complaint 2015E015 be dismissed with prejudice for lack of substantial evidence. Each party is to bear its own attorneys' fees and costs. Any party may request reconsideration of this Order within 30 days of its receipt pursuant to the procedures set out in Commission Rule 480.100(C).

December 4, 2018

COOK COUNTY COMMISSION ON HUMAN RIGHTS



Kenneth A. Gunn
Chairperson

EXHIBIT A

COOK COUNTY COMMISSION ON HUMAN RIGHTS

69 West Washington Street, Suite 3040
Chicago, Illinois 60602

Abdul MOHAMMED, Complainant)	
)	
)	Case No. 2015E015
v.)	
)	
UBER TECHNOLOGIES, INC.,)	Entered: October 4, 2018
Respondent)	

FINAL RECOMMENDED DECISION AND ORDER

On November 18, 2015, Complainant Abdul Mohammed (“Mohammed” or “Complainant”) filed the above-captioned complaint with the Cook County Commission on Human Rights (“Commission”) against Respondent Uber Technologies, Inc. (“Uber” or “Respondent”) for unlawful retaliation in violation of § 42-41(a) of the Cook County Code of Ordinances (“County Code”). Mohammed alleged that Uber unlawfully retaliated against him, by terminating his access to its services as both a driver and a customer, shortly after he filed a race discrimination complaint against Uber with the Illinois Human Rights Department (“IDHR”). Cmpl. ¶¶ I.B, E-F. On May 12, 2017, the Commission, after completing its investigation, issued an Evidentiary Determination Order 1) finding substantial evidence to support Mohammed’s unlawful retaliation claim with respect to the termination of his driver account; and 2) dismissing his unlawful retaliation claim for lack of substantial evidence with respect to the termination of his rider account. The matter was then assigned to Administrative Law Judge Joanne Kinoy (“ALJ”) to proceed with a dispositive evidentiary hearing on Mohammed’s lone retaliation claim. After the completion of discovery, the parties filed a Joint Pre-Hearing Memorandum¹ and an administrative hearing was held on this matter on February 16, 2018. At the hearing, Complainant, in addition to his own testimony, offered the testimony of Brian Maloney, Senior Operations Manager with Uber, as an adverse witness. Respondent offered the testimony of Brian Maloney and Rick Miranda, Operations and Logistics Manager with Uber. At the conclusion of the hearing, each party submitted a Post-Hearing Memorandum (“Post HM”) to the ALJ in lieu of oral closing statements. On August 14, 2018 the ALJ issued her Initial Recommended Decision and Order. On the same date, the ALJ issued a separate Order specifying the schedule for filing Objections, (September 5, 2018) and, if necessary, responses to the Objections (September 20, 2018). No Objections were filed by either party.

¹ The Joint Pre-Hearing Memorandum contains an uncontested facts section that shall be cited as: “UF ¶ ____.”

A. Proposed Findings of Facts

1. Complainant is Abdul Mohammed, (“Mohammed”) a resident of Naperville, Illinois. (UF ¶ 1; Tr. 19-20.)² Mohammed lived with his wife and three children until the couple separated in April 2016. (Tr. 66.) Before the separation Mohammed and his wife shared child care responsibilities. (Tr. 50.) After the separation, Mohammed had primary childcare responsibilities from Mondays through Fridays. (Tr. 50.)
2. Respondent is Uber Technologies, Inc., a San Francisco based technology company that connects riders to driver-partners through a virtual marketplace accessed through a software application available on smartphones. (UF ¶¶ 2-3.) Uber was introduced into the Chicago area in 2013. By 2015 over 15,000 drivers were using the Uber Driver App. as a lead generation resource to locate rider clients. (Tr. 179.)
3. Mohammed was a driver for Uber from October 2014 through June 15, 2015. To become an Uber driver Mohammed successfully completed an online application process which included a background check and training. (Tr. 22.)
4. Respondent utilized a star rating system to evaluate the quality of a driver’s performance. A driver’s star rating is based solely on ratings submitted by riders on a scale of 1(lowest) to 5 (highest), with no ratings supplied by Uber. (UF ¶¶ 9-10.) Uber facilitated the mutual ratings of drivers by riders and the rating of riders by drivers at the conclusion of each trip. (Tr. 209-10.) Both the driver and the rider were also provided with the ability to comment on the quality of the experience, with riders commenting on the driver and in turn the driver being able to note any objectionable behavior from riders. (Tr. 209-210.)
5. The Uber team in Chicago set rating thresholds for drivers generally based on the average rider rating in the market. Uber would not do business with a driver whose rider rating fell below the applicable ratings threshold. (Tr. 209-210.)
6. At all times relevant to this case, Uber utilized an Operations and Logistics team out of its corporate facility located at 370 North Carpenter Street in Chicago, Illinois. Brian Maloney (“Maloney”) was employed as a Senior Operations Manager with Uber at the Carpenter Street facility at all times relevant hereto. (Tr. 95.)
7. In early 2015, Ken Miranda (“Miranda”) was employed as one of the Operations and Logistic Managers in the Uber Chicago office. (Tr. 178.) As part of his responsibilities he managed the process by which the Chicago team determined whether riders and drivers

² Transcript of Administrative Hearing held February 18, 2018, cited as: “Tr. ____.”

were meeting the applicable rating thresholds. (Tr. 115.) To evaluate drivers Miranda ran an automated query or script program code against Uber's driver database. This process generated a list of drivers who had fallen below the Chicago area's ratings thresholds. (Tr. 116-120.) The drivers were initially identified only by their identification numbers which are comprised of 15-digit number and letter sequences that, before cross-referenced with a separate list, have no relation to any specific driver information. (Tr. 116.) Drivers who had fallen below the Chicago area's ratings threshold were notified of their ratings through a separate communications system that sent them automated communications via text message and email. (Tr. 119-20, 188-89.)

8. Miranda testified that he had no knowledge of the names of the drivers who were "captured" under the rating threshold query. He asserts that he had no discretion and drivers were identified solely by a computer program and algorithms established by the company. He further asserts that the process was entirely anonymous until the list of drivers was later communicated to a different corporate division that electronically translated the ID numbers to appropriate email addresses and sent out the email and text notices. Miranda further testified that he was never told to single out Mohammed and that he did not know about the IDHR charge until after Mohammed had been deactivated. (Tr. 191-92.)
9. The acceptable "threshold" ratings in the Chicago area were set by the Operations team. (Tr. 182-85.) According to Respondent, the "thresholds" were subject to change based on the development and needs of the company. The company was very concerned that its image and reputation could be negatively impacted by excessive critical reports of riding experiences. (Tr. 182-85.) In early 2015 the drivers had to maintain a lifetime rating of 4.1 or higher. (Tr. 203-04.) Uber management determined that this parameter was faulty because a long-time driver who received a series of recent bad ratings would be insulated from falling below the threshold by his/her overall lifetime statistic. Uber claimed that such a driver could be driving in a manner that repeatedly provided poor service to their riders without being captured by the rating system. (Tr. 185-86.)
10. To remedy this perceived deficiency, in May 2015, the Operations Team began to develop a two-tier rating system. Under this revised system, a driver would have to maintain a life time rating of 4.1 as well as a two-week rolling average of 4.4. (Tr. 181-83.) Pursuant to this system drivers were given 14 days to raise their two-week rolling average rating above 4.4. Uber states that it would send out weekly emails and texts, alerting the driver that his/her account would be deactivated if they failed to raise their two-week rolling average rating above 4.4. (Tr. 158-59.)
11. Mohammed filed a charge of discrimination against Uber with IDHR on May 20, 2015. (Resp. Ex. 14.) Mohammed alleged that Uber had discriminated against him on the basis of his race, Asian, in the terms and conditions of his employment and failure to promote.

The date on the letter from IDHR informing Uber of the charge is June 3, 2015. (Resp. Ex. 14, at 4.) The letter is addressed to “Chief Executive Officer, Uber Technologies, Inc., 300 North Elizabeth Street, Chicago, Illinois 60607.” (Resp. Ex. 14, at 3.) It is unknown when the letter was delivered to Uber’s offices, and to whom it was directed once delivered. Prior to filing this complaint Mohammed had sent various emails to Uber complaining about work related issues including not being selected for the UBER-Select program. (Tr. 84.)

12. For the time period from May 18, 2015 to May 25, 2015, Mohammed received a rating of 4.06. (Tr. 73; Resp. Ex. 19.) During this period, Mohammed received 42 five-star rides. However, because his “rating dipped” below the acceptable threshold 28 times, his aggregate rating falling below the weekly ratings threshold. (Tr. 72-75.) For the time period from May 25 to June 1, 2015, Mohammed received a 4.38 rating and was told via email that “Unfortunately, your driver rating last week was below average.” (Tr. 79-80; Resp. Ex. 20.) For the period from June 1 to June 8, 2015, Mohammed received a rating of 4.5. (Tr. 79-81.)
13. On June 1, 2015, Uber emailed a notification to Mohammed that his ratings were below the acceptable threshold. On June 8, Uber emailed a second notification to Mohammed stating that his ratings were below the acceptable threshold. On June 15, 2015, Mohammed received notice that his driver account was deactivated due to continuing below threshold ratings. (Resp. Ex. 6; Tr. 70.) Each of the three notices contained a paragraph advising Mohammed that if he took a remedial course (three hours at the cost of \$60.00) and passed a test, he could be reactivated. On June 16, 2015, Uber sent a final email to Mohammed again advising of the opportunity to take a “quality class” to develop his skills. (Resp. Ex. 7; Tr. 71-72.)
14. If a driver signed up for the “quality class,” paid \$60.00 and passed the final test, he/she would be reactivated. (Tr. 197-98.)
15. Mohammed chose not to take the remedial course. He felt that he did not need it because he did not require any remediation. (Tr. 71-72.)
16. During the first week of June 2015 (some days after the 1st but before the 8th), Mohammed went to the Chicago Uber offices to talk to a Driver Support Representative “DSR.” (Tr. 82-83.) He logged in and waited to be called. (Tr. 37.) He was called in by a DSR who he described as female, about 25 years old, mixed race, with braids. The DSR asked Mohammed if he had filed a charge and he responded by asking her how she knew. She said it was contained in the note section on his driver profile that she had pulled up on her computer. She told him she couldn’t talk to him and he would be hearing from San Francisco. She did not mention what kind of complaint he had filed. (Tr. 38.)

17. After Mohammed was deactivated from Uber on June 15, 2015, he did not work again until December 2015. Mohammed's recollection is that he next worked for Grub Hub, a food delivery service and earned approximately \$300 a week. (Tr. 43, 85.) He worked on and off for Grub Hub, a food delivery service, from December 2015 until December 2017. Mohammed also worked sporadically for DoorDash and Caviar (other food delivery services) in 2016 and 2017. (Tr. 57-59.) Mohammed stopped working for Caviar in 2017 because they were not delivering in Naperville and he wanted to be closer to home to cover childcare responsibilities. (Tr. 60.) In December 2017, Mohammed became unable to work because of a disability that he claims prevents any substantial gainful activity. He has a pending application for Social Security Disability benefits with an alleged onset date of December 2017. (Tr. 57.)
18. During the time Mohammed worked for Uber he earned in the range of \$700 per week. The weekly amounts would vary based on the days and hours he worked. (Tr. 64.)
19. Mohammed testified he was upset and suffered emotional distress when his driver account was deactivated. He felt like a "discarded tissue that had been thrown in the trash." (Tr. 44.) He was stressed because he had no money and was unable to support his family and felt that he had done "nothing wrong." (Tr. 46.)

B. Discussion

The Cook County Human Rights Ordinance ("Human Rights Ordinance") provides, in relevant part that:

No person shall retaliate against any person because that person in good faith has (1) opposed that which the person reasonably believed to be unlawful discrimination . . . or (2) has made a complaint, testified, assisted or participated in an investigation, proceeding, or hearing under this article.

County Code, § 42-41(a).

To sustain a claim for unlawful retaliation, a complainant must be able to establish that (1) he sought to exercise a right protected by the Ordinance; (2) he suffered adverse treatment that is reasonably likely to deter the complainant or others from engaging in protected activity; and (3) there is a causal connection between the protected activity and the adverse treatment. *Nugent v. Jewel Osco, Inc.*, 2015 PA002, at 10-11 (CCCHR Nov. 9, 2015).

First Element: Good Faith Opposition to Unlawful Discrimination

The Human Rights Ordinance treats the filing of a claim for unlawful discrimination at another agency as protected opposition for the purpose of its anti-retaliation provision. *Id.* at *11-

12. In a protected opposition case, “the complaint that is the basis for the retaliation claim must have been made in good faith to oppose conduct that the complainant reasonably believed was unlawful discrimination.” *Id.* at *12 (internal quotations omitted). Here, there is no dispute that Mohammed filed a discrimination complaint at the IDHR against Uber on May 20, 2015, and there is no evidence to suggest that Mohammed was not acting in good faith to oppose conduct he reasonably believed to be retaliatory, at the time that he filed that complaint. Thus, the first prong of the test has been met.

Second Element: Adverse Treatment

It is also undisputed that on June 15, 2015 Mohammed’s driver account was deactivated. After his account was deactivated, Mohammed no longer had the ability to utilize the Uber driver app and contract with potential riders. His driver account deactivation is akin to an employee’s termination, an obvious adverse action. Hence, the second prong of the test has been met.

Third Element: Causal Link Between Protected Activity and Adverse Treatment.

The critical element of a retaliation claim is the causal link between the protected activity and the adverse treatment. A retaliation claim cannot succeed absent evidence to establish this causal link. In assessing this third element, the Commission uses a “totality of the circumstances” analysis with a particular focus on the time of the adverse treatment vis a vis the protected activity. *Porreca v. Anderson*, 2014E011, *27 (CCCHR July 10, 2015). It is not enough, however, to show temporal proximity between the complaint and the adverse treatment. Mohammed must show that the Uber decision makers responsible for deactivating his account had knowledge of the complaint. Without such knowledge, a claim of retaliation must fail.

1. Respondent had knowledge of the IDHR Complaint prior to the deactivation of Complainant’s driver account.

Mohammed filed his IDHR complaint on May 20, 2015. The initial correspondence to Uber from the IDHR providing initial notice of the charge is dated June 3, 2015. There is no evidence as to when the letter/complaint was actually mailed or delivered to the Uber offices.³ Assuming that it was mailed on June 3, 2015, one can surmise that it was delivered by U.S. mail any time on or about June 6, 2015 or later, but there is also no evidence as to what happened to the IDHR correspondence after it was delivered to the Uber offices.

Mohammed claims that he visited Uber’s Chicago office to speak to a Driver Support Representative (“DSR”) during the first week of June 2015.⁴ He testified that he signed in on a computer screen and waited to be called. When he was called he met with a DSR who pulled up his information on her computer screen. According to Mohammed the DSR immediately asked

³ The June 3, 2015 IDHR correspondence is addressed to: “Chief Executive Officer, Uber Technologies Incorporated, 300 North Elizabeth Street, Chicago, Illinois 60607-1143” (Resp. Ex. 14, p.3.)

⁴ Mohammed is not sure of the exact date but states that it was during the first week of June. He testified that it was before he received the June 8, 2015 email and text from Uber regarding his driver activity and ratings. (Tr. 82-83.) This is in contrast to Mohammed’s sworn Complaint in which he asserted that he went to the office after he had received the June 8 notice to ask for specific reasons of why his account was under review. Cmpl. ¶ D. If Mohammed went to the office before he received the June 8 notice, a question arises as to the purpose of his visit.

him if he had filed a complaint and he responded by asking her how she knew. She said it was included in notes contained on his computerized driver profile. She told Mohammed she couldn't talk to him and that he would hear from San Francisco. Mohammed described the DSR as female, in her twenties, bi-racial and wearing braids.⁵ Mohammed did not initially testify that the DSR mentioned the IDHR, or as he had stated in his Complaint that he was being "placed on probation for reasons other than performance." In fact, only with the assistance of counsel on redirect did Mohammed testify that the DSR mentioned "IDHR." On re-cross, however, he backtracked and conceded that it was only "possible" that the representative had mentioned IDHR and he couldn't really remember. (Tr. 92.) Complainant's sole evidence as to Uber's knowledge of the complaint is undermined by key unresolved factual matters such as: when the IDHR complaint was received by Uber; what "complaint" the DSR was referring to when she referenced the computer screen; and whether the complaint involved race or national origin discrimination or merely internal email complaints regarding conditions and concerns previously sent by Mohammed.

Uber's evidence as to this issue is equally non-persuasive. Uber was unable or unwilling to identify the DSRs employed at the time of Mohammed's alleged visit. This position prevented the Commission or the Complainant to interview said employees and find out whether Mohammed's testimony could be corroborated. It is hard to accept that this information was unavailable to the Respondent, a large corporation with sophisticated technology. If nothing else payroll records or employee records should have been available when the Commission was investigating this case in 2016 and 2017. Uber did provide "screen shots" of parts of Mohammed's driver profile taken from Uber's internal computer system. (Resp. Ex. 1A.) These documents do not indicate that Mohammed visited the Uber offices in June 2015 or that any 'complaint' was referenced in the notes. The probative value of this evidence is minimized by the fact that certain entries could be (and were) deleted by Uber employees. Miranda testified that he went through the file and "undeleted" all previously deleted entries before "capturing this screen." (Tr. 236-38.) The lack of foundation for this exhibit as well as the failure to produce a complete reproduction of Mohammed's computerized driver file minimizes the probative value of this evidence and testimony. There is no reliable evidence of record as to what, if anything, the DSR saw on the computer screen in June 2015.

Mohammed's testimony as to the June 2015 visit to Uber offices remains, therefore, largely uncontested. The assumed delivery of the IDHR charge within weeks of Mohammed's "deactivation" supports a temporal connection. In the absence of clarifying testimony and evidence from Uber, the ALJ finds that Respondent had knowledge of a charge having been filed before Mohammed was deactivated from his driver account on June 15, 2015.

⁵ Mohammed's trial testimony was far less compelling than his original allegations. In his Complaint with this Commission, he stated under oath, "On June 8, 2015, after I received the text stating that my account was under review, I went to Respondent's office and asked a female Driver Support Representative, name unknown, for the specific reasons why my account was under review. Without my having mentioned my IDHR complaint to the Representative, she asked me if I had filed a complaint with the IDHR, told me there were notes in my file about the complaint and told me that I was put on probation for reasons other than performance." Cmpl. ¶ D. Mohammed's testimony at the hearing, as observed by the ALJ, lacked consistency and clarity. On key elements, such as his conversation with the DSR, he seemed to have forgotten facts or altered his testimony suggesting an overall lack of credibility.

2. Respondent asserts that the deactivation of Mohammed's driver account was valid and unrelated to any retaliatory motive.

Respondent asserts a legitimate, non-retaliatory reason for deactivating Mohammed's driver account. Uber claims that Mohammed's customer generated ratings fell below the required thresholds and that as a result he was subject to deactivation. Uber claims this assessment process is computer generated and not subject to discretionary management decisions. In 2015 there were 15,000 drivers and approximately 5% would fall below the required thresholds on any particular date.⁶

It is undisputed that Uber relies solely on customer generated ratings to evaluate the drivers. Riders rate their driver at the conclusion of the ride on a scale of 1-5 (with 5 being the most favorable rating).⁷ Uber has historically set different thresholds for the evaluation of drivers. In spring 2015 in Chicago, Uber changed the evaluation process to include two week rolling averages in addition to the life time averages. Uber claimed this was essential to catching less than favorable performances by long time drivers. As of June 1, 2015, a driver was required to maintain a lifetime rating above 4.1 and a two-week rolling average of 4.4 or above. According to Uber if a driver fell below the 4.4 rolling average he/she was notified of the deficit and given 14 days to raise their rolling average rating above 4.4. If at the end of the 14-day period a driver's ratings were still deficient, he/she would be deactivated.

⁶ In further support of its defense, Respondent, a few days before the hearing, produced a new list of 118 drivers claimed to have also been deactivated from driver accounts on June 15, 2015. (Resp. Ex. 2A.) Had this list been timely produced during the Commission's investigation, it is possible that this case would never have proceeded to hearing. As Complainant's counsel correctly noted in her objection to the admission of this document, the Commission could have reviewed the data and requested underlying documents to assess this evidence. (Tr. 266.) Alternatively, if the list had been produced later during discovery, the Complainant could have requested additional discovery to evaluate the status of these individuals. Respondent's assertion that the first limited disclosures were simply a "subset" and the 118 list a complete list of the same data is not persuasive. (Tr. 242.) It is troubling, to say the least, that Uber withheld potentially determinative evidence until days before hearing.

Upon receipt, Complainant's counsel could have filed a motion to bar the document and related testimony or alternatively sought to reopen discovery to allow production of underlying documents regarding the 118 alleged "comparables." Instead Miranda was allowed without objection to testify as to the 118 "comparables." At the conclusion of Respondent's case the document was offered as evidence and admitted over the objection of the Complainant.

While the document was admitted, on review the ALJ finds that the Respondent failed to establish important foundation necessary to adequately evaluate the accuracy or relevancy of this evidence. Specifically, Respondent failed to establish when the data was "pulled" or which fields were utilized to capture this report. While the ALJ found Miranda to be a generally credible witness, no weight will be given to this specific testimony regarding the alleged 118 "comparables" and supporting document. The prejudice to Complainant far outweighs any probative value and it is simply unfair to rely on it.

⁷ Complainant did not raise nor file a charge asserting that the practice of depending solely on customer ratings has a disparate impact on Asian or other minority drivers. If meritorious, this would be a claim for a different case at a different time. Mohammed emphatically testified that he believes the rating system is unfair and a tool to keep drivers on edge and allows drunk and unruly passengers to adversely affect their ability to continue driving. (Tr. 40.) This Commission is not in a position to assess these claims nor are they relevant to the present claim of retaliation.

In early 2015 Ken Miranda, Driver Operations Manager, managed the process in which the Chicago area drivers were evaluated. Miranda testified that he would run an automated query or script program code against Uber's database of drivers utilizing their user identification numbers. The user ID numbers are 15-digit numbers and letter sequences that allegedly have no relation to any specific driver name or other personal information. (Tr. 116.) Miranda testified that he never had knowledge of the identity of any drivers impacted by the results of the query. He claims the process was completely anonymous and that he did not have knowledge of Mohammed's IDHR charge until after he was deactivated. Respondent claims that this process resulted in Mohammed being notified on June 1, via text and email, that his two-week rolling average rating had dipped below 4.4. (Tr. 36; Resp. Ex. 4.) A snapshot of Mohammed's two-week rolling average, which was sent to Mohammed on the same day revealed that his two-week rolling average rating was 4.21. (Tr. 233.) On June 8, 2015, Mohammed received a second text and email notice from Uber informing him that his two-week rolling average rating remained below 4.4. (Tr. 68-70.) On June 15, he received notice that his driver account was deactivated for quality concerns (i.e., after a previous warning, less than 4.1 lifetime rating or less than 4.4 rating over two-week rolling average). (Cmpl. Ex. 8.)

In addition to the alleged anonymous process, Respondent produced the testimony of decision makers, Brian Maloney and Ken Miranda who each stated that they had no knowledge of the IDHR charge until after June 15, 2015.

3. Complainant incorrectly claims that irregularities in the computer based assessment program support an inference of retaliation against Mohammed.

Complainant claims that the evidence of record shows that the computerized system was not automatic and was applied inconsistently "specifically as to Complainant." (Compl. Memo p.9.)^{8,9} To this end Complainant relies on the examples presented by Uber during the investigation to highlight that the evaluation process was discretionary and not uniformly applied. In each of the examples there are variations as to number of notices and/or weeks of review prior to deactivation.¹⁰ Complainant argues that these irregularities prove that the program is not really automated, is subject to human manipulation and when considered with his conversation with the

⁸ Complainant's Post-Hearing Memorandum cited as: "Compl. Memo, p.____".

⁹ Complainant fails to provide any evidentiary support for the assertion that the computerized system was applied inconsistently as to Mohammed.

¹⁰ Examples offered by Uber (Resp. Exs. 9-10.), "R.B." did not receive any warning on June 1, 2015. He received a warning on June 8, 2015 and was deactivated on June 15, 2015. He had received a prior warning on April 1, 2015 but had raised his rolling average above the threshold after that time. (Resp. Ex. 9 ¶¶ 21-22; Resp. Ex. 10 ¶ 4, attachments A-B.) "M.L." was deactivated on June 1, 2015 for failing to meet new rolling threshold even though he had been rated "4.4." He had received warnings on May 6, 2015 and May 15, 2015 (and several times before) but did not receive one two weeks before the deactivation. (Resp. Ex. 9 ¶ 21; Resp. Ex. 10 ¶ 7, attachment D.) "T.H." did not receive a warning on June 1, 2015. He received a warning on June 8, 2015 and was deactivated on June 15, 2015. (Resp. Ex. 9 ¶ 21; Resp. Ex. 10, ¶¶ 8-9, attachments E-F.)

DSR, require the conclusion that Mohammed's driver account was deactivated because he had filed a charge of discrimination. (Compl. Memo p.9.)

Based on the administrative record Complainant has shown that Uber's automated assessment system as applied in June 2015 was not totally uniform and thus possibly subject to manipulation. The key issue here, however, is whether Complainant has shown that this imperfect system resulted in drivers with equal or worse ratings than Mohammed not being deactivated on before June 15, 2015. Each of the drivers cited by Uber and relied on by Complainant were treated the same in that they were deactivated from their driver accounts. The fact that some of them received less than the required notice or perhaps even incorrect deactivation, shows that Uber's system as of June 15, 2015 was not uniform nor perfect. It does not, however, show that these other drivers were treated more favorably because they had not filed charges. It does not show that Complainant's assessment and ultimate "deactivation" was the result of individualized intervention because he had filed a charge.

Complainant has not established nor even alleged that his ratings were wrongly calculated or that he did not receive multiple notices before deactivation. There is no evidence that Mohammed's ratings did not fall below Uber's June 1, 2015 threshold criteria for driver account "deactivation." Most importantly, Mohammed has not shown that the quality assessment was more leniently applied to other drivers and specifically to those who had not filed charges. The testimony of Miranda and Maloney, the Uber management personnel with responsibility for running the assessment process, that they had no knowledge of the IDHR complaint until after June 15, 2015 remains unrebutted.¹¹ Complainant has failed to establish any probative link between the irregularities in the assessment program and his deactivation on June 15, 2015. Mohammed has failed to prove that Uber's articulated rationale is not worthy of credence nor the true reason for the deactivation of his driver account. Complainant has not established that Uber's rationale is pretext for retaliatory animus.

C. Conclusion

Based on the foregoing proposed statement of facts and discussion herein, the ALJ recommends a finding that the Complainant has not shown by a preponderance of the evidence that the deactivation of his driver account on June 2015 constituted illegal retaliation in violation

¹¹ Given the large workforce of 15,000 drivers and the computerized assessment process, Miranda's testimony that he had no knowledge of the identity of individual drivers nor was instructed to treat Mohammed differently is credible. There is absolutely no evidence and it seems highly unlikely, that Miranda, nor anyone else, tinkered with the application of the assessment program to adversely affect one driver.

of the Cook County Ordinance.¹² It is therefore recommended that this Complaint be dismissed with prejudice.

October 3, 2018

By delegation:

/s/ Joanne Kinoy_____

Joanne Kinoy, Administrative Law Judge
Cook County Commission on Human Rights
Cook County Office of Administrative Hearings

THIS FINAL RECCOMENDED ORDER AND DECISION IS NOT FINAL NOR
APPEALLABLE. IT IS SUBJECT TO REVIEW BY THE COMMISSION.

¹² Even if Complainant had established liability he most likely would not have been awarded lost wage damages. It is undisputed that Uber offered all drivers who had been deactivated a path to reactivation. Uber notified Mohammed on multiple occasions that he could sign up (and pay) for a three hour “quality” course. If a driver participated in the course and passed the final test, he/she would be automatically reactivated. Mohammed admitted knowledge of the course but felt that he didn’t need the training and was simply unwilling to participate. This refusal arguably constitutes a failure to mitigate damages that would preclude economic damages.